

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY D. HOLLIE,

Defendant-Appellant.

UNPUBLISHED

December 11, 2003

No. 241436

Wayne Circuit Court

LC No. 00-012248-01

Before: Cavanagh, P.J., and Jansen and O'Connell, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree premeditated murder, MCL 750.316(1)(a), assault with intent to commit murder, MCL 750.83, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant's convictions arise from his participation in the shooting that resulted in the death of one individual and the wounding of another. He was sentenced to concurrent terms of life imprisonment without parole for the murder conviction, eighteen to thirty years' imprisonment for the assault conviction, and thirty to sixty months' imprisonment for the felon in possession conviction, all to be served consecutively to a two-year term of imprisonment for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant argues that several statements by the prosecutor during closing and rebuttal arguments require us to reverse his convictions. We disagree. Because defendant failed to timely object to any of the allegedly improper comments, he failed to preserve this issue for appellate review. *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003). We only review unpreserved claims of prosecutorial misconduct for plain error that affected the defendant's substantial rights. *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000). Moreover, unless we perceive manifest injustice, we will not reverse a conviction based on prosecutorial remarks whose prejudice the trial court could have cured if trial counsel had timely objected and received a curative instruction. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). The ultimate determination of a prosecutorial misconduct issue generally depends on whether the prosecutor's conduct, taken in context, deprived defendant of a fair and impartial trial. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

Defendant first argues that the prosecutor made improper Biblical references and exhorted the jurors, as good people, to punish defendant for his crime. Defendant correctly argues that prosecutors are generally prohibited from appealing to religious beliefs or civic duty

during their arguments, because such appeals tend to distract juries from their straightforward task of discerning the evidence and applying it to the law. But in this case, defendant takes the prosecutor's innocuous comments completely out of context. First the prosecutor exhorted the jury with the proverb "without vision the people perish." While the prosecutor claimed that he was paraphrasing the Bible, the mention of something religious does not automatically qualify as misconduct. *People v Mischley*, 164 Mich App 478, 483; 417 NW2d 537 (1987). Rather, the propriety of the remark depends on the context. *Id.* In this case, the prosecutor used the phrase to encourage the jury to closely and dutifully review the evidence. He did not invoke religion to condemn defendant or otherwise suggest that the jurors should find defendant guilty irrespective of the evidence. Therefore, the prosecutor did not commit misconduct by reciting the phrase or claiming its source.

Defendant next argues that the prosecutor continued the improper religious theme of his closing argument when he adopted a pastoral tone and making the statement, "I'll be Jesus." Again, our review of the challenged remark in context reflects that the prosecutor did not intend the remark to have a religious connotation. Rather, the prosecutor apparently used the exclamatory phrase as an odd colloquial euphemism for a stronger oath. The prosecutor used the words to emphasize the tenuous nature of defense counsel's argument that the affirmative link between the forensic evidence and the wounded victim's identifications of his assailants were coincidence. This type of exclamation does not qualify as misconduct. See *People v Aldrich*, 246 Mich App 101, 112; 631 NW2d 67 (2001) (reciting the well established principle that a prosecutor need not confine argument to the blandest of all possible terms).

Defendant further asserts that the prosecutor improperly appealed to the jury's sympathy or sense of civic duty by repeating the statement, "All that is necessary for evil to triumph is for good people to do nothing," and expressing his hope that "you not . . . do nothing cause [sic] that would certainly be a tragedy in this case." In context, these words do not inappropriately appeal to any passion or duty enough to taint defendant's trial. The relatively brief exhortation came in the midst of a lengthy review of the evidence. Furthermore, the circuit court's instruction that the lawyers' statements and arguments were not evidence cured any prejudicial effect the comments generated. *People v Stimage*, 202 Mich App 28, 30; 507 NW2d 778 (1993).

Defendant finally challenges three rebuttal remarks the prosecutor made in his rebuttal. Defendant argues that the comments improperly insinuate that defense counsel tried to mislead the jury. We disagree. The prosecutor countered a defense argument concerning shell casings with a reference to other evidence, and then he stated that the evidence showed how defense counsel's argument was "bunk and indicative of how low one has to go to argue that." He also questioned the "audacity" of defense counsel to suggest that none of the shell casings recovered at the scene came from defendant and expressed his loss of patience with defense counsel's references to the possibility that a witness to the shooting may have possessed a weapon.

"However, the prosecutor's comments must be considered in light of defense counsel's comments." *Watson, supra* at 592-593. Viewing the rebuttal arguments by the prosecutor in context, all three of the challenged statements responded to arguments presented by defense counsel during her closing remarks. The prosecutor's comments, "in essence, charged that defense counsel had inaccurately summarized the evidence presented." *People v Phillips*, 217 Mich App 489, 498; 552 NW2d 487 (1996). They did not "personally attack[] defense counsel or shift[] the jury's focus from the evidence to defense counsel's personality." *Id.* Even

assuming that the prosecutor's arguments suggested some deception by defense counsel, a prosecutor may always vigorously challenge a defendant's tenuous evidentiary relationships and explanations and vividly invite the jury to discard such inferences as worthless and contrary to reality. *Watson, supra* at 592-593. In light of the court's instruction that the attorneys' arguments do not constitute evidence, we find no prejudice from these arguments. *Id.* at 593; *Stimage, supra* at 30.

We conclude that none of the prosecutor's challenged remarks in this case qualify as misconduct that affected defendant's trial. Moreover, assuming *arguendo* the impropriety of some of the remarks, a timely curative instruction would have erased any prejudice the comments generated. *Schutte, supra* at 720.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Peter D. O'Connell